

IN THE ST. MARY'S COUNTY BOARD OF APPEALS

VAAP NUMBER 25-0728

RICHARD PROPERTY

THIRD ELECTION DISTRICT

VARIANCE REQUEST HEARD: SEPTEMBER 11, 2025

ORDERED BY:

**Mr. Hayden, Mr. Brown,
Mr. Payne, Dr. Valcke, and Ms. Weaver**

ENVIRONMENTAL PLANNER: ANDREW CHENEY

DATE SIGNED: October 9, 2025

Pleadings

The Richard Living Trust, by Trustees Joseph and Jane Richard, (“Applicants”) seek a variance from the St. Mary’s County Comprehensive Zoning Ordinance (“CZO”) § 41.7.4.a(5) to allow residential development to be closer to the water than the principal structure on an adjacent parcel for an addition and a deck.

Public Notification

The hearing notice was advertised in *The Southern Maryland News*, a newspaper of general circulation in St. Mary’s County, on August 22 and August 29, 2025. A physical posting was made on the property and all property owners within 200’ were notified by certified mail on or before August 27, 2025. The agenda was also posted on the County’s website on or before Friday, September 5, 2025. Therefore, the Board of Appeals (“Board”) finds and concludes that there has been compliance with the notice requirements.

Public Hearing

A public hearing was conducted at 6:30 p.m. on September 11, 2025 at the St. Mary’s County Governmental Center, 41770 Baldrige Street, Leonardtown, Maryland. All persons desiring to be heard were duly sworn, the proceedings were recorded electronically, and the following was presented about the proposed amendment requested by the Applicants.

The Property

The subject property is situate 40383 Old Breton Beach Road, Leonardtown, Maryland (“the Property”). The Property is 22,200 square feet, more or less, is zoned Rural Preservation District (“RPD”), has a Limited Development Area (“LDA”) Critical Area overlay, and may be found at Tax Map 48, Grid 19, Parcel 135.

The Variance Requested

Applicants seek a variance from CZO § 41.7.4.a(5) to allow residential development to be closer to the water than the principal structure on an adjacent parcel for an addition and a deck.

St. Mary's County Comprehensive Zoning Ordinance

CZO § 41.7 establishes the Buffer Management Overlay District ("BMO"). A BMO is an area where "it has been demonstrated that the existing pattern of development in the Critical Area prevents the Buffer from fulfilling the functions for water quality and habitat protection" set by state law. Shoreline development restrictions are relaxed in a BMO. CZO § 41.7.4 sets forth specific development standards where development activities may be approved in a BMO without a variance. CZO § 41.7.4.a(5), implicated in the pending matter, states "residential development and redevelopment shall not be closer to the water than principal structures on an adjacent property, or the standard rear yard setback for the underlying zone, or 25 feet, whichever is greater."

Departmental Testimony and Exhibits

Amanda Yowell, an Environmental Planner for the St. Mary's County Department of Land Use & Growth Management ("LUGM"), presented a staff report prepared by Andrew Cheney and a PowerPoint presentation that included the following testimony:

- The subject property (the "Property") was recorded in the Land Records of St. Mary's County per Plat Book 4 Page 330 on March 14, 1928 (Attachment 2), in the Critical Area of St. Mary's County. The existing single-family dwelling was built in 1971, before the adoption of the Maryland Critical Area Program on December 1, 1985, according to Real Property Data, Maryland Department of Assessments and Taxation.
- According to the Maryland Department of Assessments and Taxation, this property

is a 22,200 square foot lot located at 40383 Old Breton Beach Road, in Leonardtown and is adjacent to the tidal waters of the Potomac River.

- The site plan (Attachment 8) proposes a deck and addition. The proposed deck and addition are closer to tidal waters than the principal structure on the adjacent property. The CZO states in Section 41.7.4.a.(5) that residential development cannot be closer to the water than the principal structure on an adjacent property.
- Variance mitigation is required at a ratio of 3:1 (COMAR 27.01.09.01-2 Table H). The total mitigation required is 1,989 square feet of plantings to meet these requirements. A planting agreement and plan will be required prior to the issuance of the building permit.
- The Critical Area Commission responded to this request and their response is uploaded Board Docs as Attachment 10.
- The Department of Land Use and Growth Management has approved the site plan for zoning and floodplain requirements. The site plan is exempt from the stormwater management requirements as it proposes less than 5,000 square feet of soil disturbance.
- Attachments to the Staff Report:
 - #1: Critical Area Standards Letter
 - #2: Plat Liber 4, Folio 330
 - #3: Critical Area Map
 - #4: Existing Conditions
 - #5: Location Map
 - #6: Land Use Map

- #7: Zoning Map
- #8: Site Plan
- #9: Site Plan Detail
- #10: Critical Area Commission Response

Applicants' Testimony and Exhibits

Applicant Joseph Richard appeared before the Board, along with Mr. Sean Sullivan, who presented the site plan and answered many technical questions on Applicants' behalf. Together, they explained the proposal, presented a slideshow, and answered questions posed by the Board. The following evidence and testimony were included in their presentation:

- The Richard's house almost entirely sits closer to the water than the adjacent residence.
- There is a septic system "in front" of the house, preventing the house from being located further from the water.
- Applicants, who will be the users of the Property, are both "getting older," and want more space to more easily move around.
- Among other enhancements, Applicant stated bathrooms in the house will be made more accessible by virtue of the requested improvements.

Public Testimony

No members of the public appeared to offer testimony in this matter.

Decision

County Requirements for Critical Area Variances

COMAR 27.01.12.04 requires an Applicant to meet each of the following standards before a Critical Area variance may be granted:

- (1) Due to special features of the site or special conditions or circumstances peculiar to the

applicant's land or structure, a literal enforcement of the local Critical Area program would result in an unwarranted hardship to the applicant;

- (2) A literal interpretation of the local Critical Area program would deprive the applicant of a use of land or a structure permitted to others in accordance with the provisions of the local Critical Area program;
- (3) The granting of the variance would not confer upon the applicant any special privilege that would be denied by the local Critical Area program to other lands or structures in accordance with the provisions of the local Critical Area program;
- (4) The variance request is not based upon conditions or circumstances that are the result of actions by the applicant;
- (5) The variance request does not arise from any conforming or nonconforming condition on any neighboring property;
- (6) The granting of the variance would not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the jurisdictions local Critical Area; and
- (7) The granting of the variance would be in harmony with the general spirit and intent of the Critical Area law, the regulations in this subtitle, and the local Critical Area program.

Additionally, the Maryland Code Annotated, Natural Resources Article, § 8-1808(d)(2)(ii) requires the Applicant to overcome the presumption that the variance request should be denied.

Findings - Critical Area Variance

Upon review of the facts and circumstances, the Board finds and concludes the Applicants are entitled to the requested relief.

The Board finds that denying the Applicants' request would constitute an unwarranted

hardship. In *Assateague Coastal Trust, Inc. v. Roy T. Schwalbach*, 448 d. 112 (2016), the Court of Appeals established the statutory definition for “unwarranted hardship” as it pertains to prospective development in the Critical Area:

[I]n order to establish an unwarranted hardship, the applicant has the burden of demonstrating that, without a variance, the applicant would be denied a use of the property that is both significant and reasonable. In addition, the applicant has the burden of showing that such a use cannot be accomplished elsewhere on the property without a variance.

Id. at 139.

Here, Applicants have sufficiently demonstrated that, absent the variance, they would be denied a use of the Property both significant and reasonable. The proposed improvements are modest additions to an existing residence. The additions will, in Applicants’ words, enhance accessibility and mobility in the house, and appear to be reasonably modest in size, scope, or character. Applicant stated that, because of the location of an existing septic system, it is not possible to move the house further away from the water’s edge. With Applicants having thus identified a significant and reasonable use and demonstrated the impracticability of establishing that use elsewhere on the Property, we conclude the Applicants adequately demonstrate denial would constitute an unwarranted hardship.

Similarly, the Board finds literal interpretation of the local Critical Area program would deprive Applicants of a substantial use permitted to others. A single-family residence is a foundational use of one’s real property. The proposed dwelling, inclusive of all additions, is of a character and nature that appear to be typical for the Property’s immediate environs, and there is nothing about the pending proposal that removes it from the realm of projects reasonably accomplishable by similarly-situated property owners.

To the third factor, the granting of the variance would not confer upon the applicant any special privilege that would be denied by the local Critical Area program to other lands or structures. Applicants avail themselves of their right to seek a variance and are hewing as close to the Critical Area program's strictures as may be reasonably expected. Their proposal will not be granted unless accompanied by required mitigation. Provisions for requesting and granting a variance are a necessary element of any local Critical Area program. Natural Resources Article § 8-1808(c)(iii)(13). Applicants have exercised their right to petition for a variance, as any property owner has the right to do. There is no special privilege conferred on an Applicant who does so and is granted a variance in turn, provided Applicants carry their burden to meet the required standards.

Fourth, the variance request is not based upon conditions or circumstances that are the result of actions by the Applicants. Rather, Applicants are constrained by the physical characteristics of their lot and its pre-existing configuration.

Fifth, the variance request does not arise from any conforming or nonconforming condition on any neighboring property.

Sixth, the granting of the variance would not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the jurisdiction's local Critical Area. When development is permitted in the Critical Area Buffer it must be heavily mitigated. As noted by staff, 1,989 square feet of mitigation plantings will be required. These plantings will mitigate the adverse effects of development and will improve floral and fauna habitat in the Critical Area Buffer. These plantings would not be required unless the Property is redeveloped.

Lastly, by satisfying the above criteria the Board finds that granting of the variance will be in harmony with the general spirit and intent of the Critical Area law, the regulations in this

subtitle, and the local Critical Area program. BMOs are areas where, by definition, strict compliance with the Critical Area program is unlikely to achieve the intended goals of the Critical Area program, and standards are relaxed – though, obviously not so relaxed so as to obviate Applicants’ need for a variance. Even so, Applicants have made a compelling case. Their requested development is reasonable; the development is impracticable, if not impossible, to pursue without the requested variance; granting the requested variance will yield mitigation and plantings that would otherwise not be placed on the property. Given the facts of this matter, the Board feels an appropriate balance between reasonable redevelopment and protecting the environmental quality of the Property’s immediate environs and the greater Chesapeake Bay area have been met, and the spirit of the Critical Area is preserved.

Finally, in satisfying each of the necessary criteria the Applicants have overcome the statutory presumption against granting a variance.

In light of all of the foregoing, we conclude the Applicants should be granted the requested relief.

ORDER

PURSUANT to the application of The Richard Living Trust, by Trustees Joseph and Jane Richard, petitioning for a variance from CZO § 41.7.4.a(5) to allow residential development to be closer to the water than the principal structure on an adjacent parcel for an addition and a deck; and

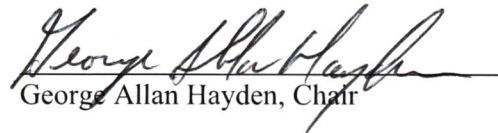
PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is,

ORDERED, by the St. Mary’s County Board of Appeals, pursuant to CZO § 24.8, that the Applicants are granted the requested variance;

UPON CONDITION THAT, Applicants shall comply with any instructions and necessary approvals from the Office of Land Use and Growth Management, the Health Department, and the Critical Area Commission.

This Order does not constitute a building permit. In order for the Applicants to construct the structures permitted in this decision, they must apply for and obtain the necessary building permits, along with any other approvals required to perform the work described herein.

Date: October 9, 2025

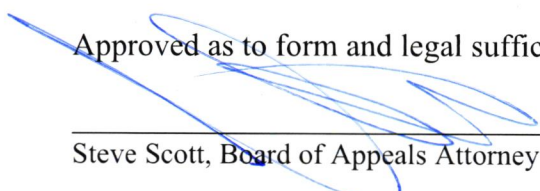

George Allan Hayden, Chair

Those voting to grant the variance:

Mr. Hayden, Mr. Brown, Mr. Payne,
Dr. Valcke, Ms. Weaver

Those voting to deny the variance:

Approved as to form and legal sufficiency



Steve Scott, Board of Appeals Attorney

NOTICE TO APPLICANTS

Within thirty (30) days from the date of this Order, any person, firm, corporation, or governmental agency having an interest therein and aggrieved thereby may file a Petition for Judicial Review in the St. Mary's County Circuit Court. St. Mary's County may not issue a permit for the requested activity until the 30-day appeal period has elapsed.

Further, St. Mary's County Comprehensive Zoning Ordinance § 24.8 provides that a variance shall lapse one year from the date the Board of Appeals granted the variance unless: (1) A zoning or building permit is in effect, the land is being used as contemplated in the variance, or regular progress toward completion of the use or structure contemplated in the variance has taken place in accordance with plans for which the variance was granted; (2) a longer period for validity is established by the Board of Appeals; or (3) the variance is for future installation or replacement of utilities at the time such installation becomes necessary.

If this case is not appealed, exhibits must be claimed within 60 days of the date of this Order; otherwise, they will be discarded.